IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Writ Petition No.705 of 2007

Brijmohan Ruia (Multi-Purpose)
High School (Primary Division). .. Petitioner
Vs.
The Superintendent & Ors. .. Respondents
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Ms Kumud Bhatia for the petitioner.

Shri A.Y.Sakhare, Senior Counsel, with Ms Ajit Kumar for the respondents.
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CORAM : R.M.S.KHANDEPARKAR &
D.G.KARNIK, JJ

DATED : 27TH APRIL, 2007

P.C.

1. Heard. The petitioner challenges the order of the department refusing approval of an appointment of the teacher. The approval has been rejected essentially on the ground that the petitioner has failed to inform the department about the vacancy in advance and before making appointment in the said post. Though the law requires that the authorities to make necessary provision for the teachers to be declared surplus and to appoint them in another institution wherever they can be placed accordingly, since this requirement has not been followed and no opportunity was given to the department to accommodate surplus teachers in the vacancy arisen in the

petitioner's institution, the appointment granted without following the procedure has been disapproved by the department. We do not find any illegality or error committed by the department in refusing approval to the appointment of the teacher in writ jurisdiction.

2. Placing reliance in the decision of the Apex Court in **Brahmo Samaj Education Society & Ors. v. State of W.B. & Ors.,** reported in (2004) 6 SCC 224, it is sought to be contended on behalf of the petitioner that the petitioner is a minority institution, and therefore, it has right to appoint its employees. Apart from the fact that there is no quarrel upon the said proposition, the decision does not help the petitioner in that regard. Rejection of approval is essentially on the ground of non-compliance of the statutory provisions regarding obligations which are not only of the authority but even of the management to ensure that the surplus teachers should be accommodated first whenever vacancies arise. Undisputedly the petitioner's institution is fully government aided school. Considering the same, we do not find any illegality committed by the department in the impugned order. Hence, the writ petition is rejected.

(D.G.KARNIK, J) (R.M.S.KHANDEPARKAR, J)